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13 *Counsel for Defendants*

14
15 **IN THE UNITED STATES DISTRICT COURT**
16 **FOR THE DISTRICT OF NEVADA**

17
18 MICHAEL EDGING,
19 v.
20 Plaintiff,
21
22 C. R. BARD, INC. and BARD PERIPHERAL
23 VASCULAR, INC.,
24 Defendants.

25 CASE NO. 2:21-cv-00322-RFB-BNW
26
27 **DEFENDANTS' INDIVIDUAL
28 PROPOSED DISCOVERY PLAN &
SCHEDULING ORDER SUBMITTED
IN COMPLIANCE WITH LR 26-1(b)
SPECIAL SCHEDULING REVIEW
REQUESTED**

29
30 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. (collectively “Bard” or
31 “Defendants”) (“Plaintiff and Bard are collectively referred to herein as “the Parties”), by and
32 through their undersigned counsel, and pursuant to the Local Rules of Civil Procedure for the
33 District of Nevada, hereby submit the following Individual Proposed Discovery Plan and
34 Scheduling Order.

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1 **1. STATEMENT OF REASONS FOR SPECIAL SCHEDULING REVIEW REQUEST UNDER**
 2 **LR 26-1.**

3 This is a complex products liability action involving the Plaintiff's treatment with an
 4 inferior vena cava filter that was designed, manufactured, and sold by the Defendants. An
 5 inferior vena cava filter is a prescription medical device that is implanted into a patient's
 6 inferior vena cava, which is the largest vein in the body. The filter is designed to prevent large
 7 blood clots from traveling from the lower extremities to the heart and lungs where they can
 8 be fatal. Plaintiff contends that on August 13, 2009, Plaintiff had a Bard G2® inferior vena
 9 cava filter (the "Bard Filter") implanted in his inferior vena cava. Plaintiff alleges the Bard
 10 Filter has caused him injuries and damages. Plaintiff has asserted various state law claims
 11 against Defendants for strict products liability, negligent design, negligent manufacture,
 12 negligent failure to recall/retrofit, negligent failure to warn, negligent misrepresentation,
 13 negligence per se, breach of express and implied warranties, fraudulent misrepresentation,
 14 fraudulent concealment, consumer fraud and deceptive trade practices, and punitive damages.

15 Defendants deny the allegations contained in the Complaint and assert that the Bard
 16 Filter is a life saving device cleared by the FDA as being safe and effective that was placed
 17 in Plaintiff in conjunction with orthopedic procedure. Defendants deny that the Bard Filter
 18 was defectively designed or manufactured and that the Bard Filter was otherwise in an unsafe
 19 condition. Defendants further deny that they failed to warn Plaintiff's implanting physician
 20 of the risks associated with the implant procedure, that they were negligent, or that they
 21 breached any express or implied warranties. Defendants also deny that they in any way caused
 22 or contributed to Plaintiff's alleged injuries asserted in this matter and further assert
 23 intervening and alternative causes as defenses. Defendants allege that there are no facts
 24 support a finding of fraudulent misrepresentation or concealment or any violation of consumer
 25 fraud and deceptive practices. Likewise, Defendants deny that they engaged in any willful
 26 misconduct, malice, fraud, wantonness, oppression, or entire want of care, which would raise
 27 the presumption of conscious indifference to consequences.

1 This case was part of a Multi-District Litigation proceeding called *In re: Bard IVC*
 2 *Filters Product Liability Litigation*, 2:15-md-02641, which is pending before Senior Judge
 3 David Campbell of the District of Arizona (the “MDL”). After more than four years, the
 4 completion of general issue/generic discovery, and conducting three bellwether trials, Judge
 5 Campbell ordered cases that have not settled or are not close to settling be transferred to the
 6 appropriate jurisdictions around the country for case-specific discovery, workup, and eventual
 7 trial.

8 This case was remanded back to this Court on February 25, 2021.[ECF 9 and 10]. The
 9 MDL Court’s *Amended Suggestion of Remand and Transfer Order (Fifth)* (“Remand Order”)
 10 contains a comprehensive description of the history of the MDL, the claims and defenses
 11 asserted by the parties, various case management orders entered in the MDL, the status of
 12 general common fact and expert discovery conducted in the MDL, summaries of the
 13 bellwether cases, and the Court’s rulings on various matters common to all cases. *See* Remand
 14 Order [ECF 8].

15 The Plaintiff’s claims against Defendants and Defendants’ defenses are inextricably
 16 tied to the Plaintiff’s medical condition. At this time, Defendants contend that they do not
 17 know enough information about the Plaintiff’s medical history to promptly settle or resolve
 18 the case.

19 Case-specific discovery that was conducted before or during the time it was a part of
 20 MDL was minimal and limited to the submission of basic plaintiff and defense profile forms
 21 and limited plaintiff medical records. Consequently, the Parties will need to accomplish all
 22 case-specific fact discovery on remand. Defendants anticipate that case-specific discovery
 23 will include the collection of comprehensive medical records and the need to take depositions
 24 of numerous fact-specific witnesses, including the Plaintiff; treating medical providers,
 25 including physician(s) who implanted, removed or attempted to remove the Bard Filter at
 26 issue, if applicable and necessary; and other witnesses who have relevant information about
 27 the Plaintiff’s alleged claims.

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1 **2. ISSUES IN DISPUTE**

2 At this time, there are no discovery disputes to bring to the Court's attention. In the
 3 event a dispute arises, the Parties will seek Court intervention, as necessary.

4 **3. CONFERENCE TIMING.**

5 Defendants C. R. Bard, Inc. and Bard Peripheral Vascular, Inc. first appeared in this
 6 matter when local counsel, Eric Swanis, entered his appearance on March 8, 2021. The case
 7 was stayed pending negotiations of a settlement, which negotiations were unsuccessful. [ECF
 8 20]. Following the expiration of the stay, counsel for Defendants attempted to confer with
 9 Plaintiffs' counsel regarding a scheduling order and discovery plan but received no response.
 10 On December 10, 2021, counsel for Defendants submitted to Plaintiff's counsel, via email, a
 11 Proposed Scheduling Order and Discovery Plan containing the information set forth herein.
 12 Defendants also submitted to Plaintiff's counsel a Proposed Protective Order similar to the
 13 MDL protective order previously used in other IVC Filter cases. Having received no
 14 response, on December 15, 2021, counsel for Defendants attempted to reach Plaintiff's
 15 counsel by telephone and left a voicemail. Following the voicemail, counsel for Defendants
 16 sent an email to Plaintiff's counsel following up on the Proposed Scheduling Order and
 17 Discovery Plan but again received no response. Despite Defendants' efforts, Plaintiff's
 18 counsel has not returned any communication. As such, Defendants respectfully submit the
 19 following Individual Proposed Scheduling Order and Discovery Plan.

20 **4. DISCOVERY PLAN**

21 **a. What changes should be made in the timing, form, or requirement for
 22 disclosures under Rule 26(a), including a statement of when initial
 23 disclosures were made or will be made.**

24 As noted above, Defendants attempted to obtain Plaintiff's stipulation to the
 25 scheduling order and discovery plan set forth herein as well as a proposed stipulated protective
 26 order which contains provisions similar to the MDL protective orders but received no
 27 response. Given the indisputable need for a protective order and the fact that Plaintiff did not
 28 respond to Defendants' requests, Defendants will file, in conjunction with this Proposed

1 Scheduling Order, a Motion for Protective Order to preserve the confidentiality of certain
 2 documents and information at issue. As such, Defendants propose the Parties exchange Rule
 3 26(a) disclosures subject to the Defendants' proposed protective order no later than January
 4 25, 2022.

5 Moreover, Defendants propose that Plaintiff include in his initial disclosures a list of
 6 medical providers for the period ten (10) years prior to implant of the filter to the present, *i.e.*
 7 from August 1999 to present, and to include execution by Plaintiff of standard medical and
 8 other records release authorizations, for a period of ten (10) years preceding the date of
 9 implant.

10 **b. The subjects on which discovery may be needed, when discovery should
 11 be completed, and whether discovery should be conducted in phases or be
 12 limited to or focused on particular issues.**

13 General liability fact and expert discovery was completed in the MDL and is now
 14 closed. The only remaining discovery is case-specific. The Remand Order repeatedly makes
 15 clear that the time for general discovery is over: "courts receiving these cases need not be
 16 concerned with facilitating general fact discovery on remand or transfer." [ECF 8 at 9]; *see*
 17 *also id.* at 3 ("The primary purposes of this MDL – coordinated pretrial discovery and
 18 resolution of common issues – have been fulfilled. All common fact and expert discovery has
 19 been completed."). The subjects of discovery going forward will focus on Plaintiff's medical
 20 history and treatment, as well as case-specific causation, which Defendants deny.

21 In particular, the collection of medical and other records is a key part of case-specific
 22 discovery. In order to expedite records collection in this case, Defendants propose the Parties
 23 use the joint records collection process utilized in the MDL. Defendants propose the Parties
 24 use The Marker Group as their joint records collection vendor to collect any medical,
 25 insurance, Medicare, Medicaid, prescription, Social Security, workers' compensation, and
 26 employment records for Plaintiff from third-parties designated as custodians for such records
 27 by Plaintiff or Defendants. Plaintiff will need to provide various signed authorizations to
 28 Defendants permitting them to collect these records.

1 The medical record collection process alone typically takes at least three months **and**
 2 ***the timing of this process is beyond the Parties' control.*** Moreover, given the COVID-19
 3 pandemic, it is anticipated that this effort will take longer than the typical three months as
 4 facilities and businesses temporarily close, allow employees to work from home, experience
 5 staffing shortages or as medical facilities have directed their staff to focus only on activities
 6 concerning patient care in anticipation of an increased demand for services.

7 Only after records have been collected can Defendants analyze and summarize
 8 Plaintiff's medical history; retain experts; conduct depositions, including Plaintiff, his spouse
 9 and/or other close family members, the implanter of the Bard Filter, the explanter of the Bard
 10 Filter, if any, other medical providers, Plaintiff's treating physicians, additional fact witnesses
 11 identified in Plaintiff's Rule 26(a)(1) initial disclosures and supplements thereto and
 12 additional fact witnesses identified in discovery.

13 Finally, the Parties will likely retain case-specific experts, who will need to review the
 14 relevant documents and testimony, formulate opinions, generate reports, and sit for
 15 depositions.

16 Defendants propose that case-specific fact and expert discovery should be phased, such
 17 that fact discovery concludes before expert disclosures and depositions take place. In light of
 18 the necessary trial work-up required as referenced above, timing for sensitive records
 19 collection through a third-Party vendor which is beyond the Parties' control, and the
 20 complexity of this case, Defendants submit that the following schedule is necessary to allow
 21 for adequate time for detailed-case specific discovery and pretrial practice in this complex
 22 products liability case. Defendants also request that a trial date not be set any earlier than
 23 December 2022 to allow for the completion of discovery and resolution of the expected
 24 dispositive motions. Defendants expect this case to take twenty (20) trial days.

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1 Defendants propose the following schedule for case-specific fact and expert discovery:

2 PROPOSED DATE	3 DEADLINE
4 January 25, 2022	5 The Parties shall exchange Rule 26(a) Initial Disclosures. 6 The Plaintiff shall produce a list of medical providers for the 7 period of time from five years before placement of the Bard 8 Filter at issue in the case to the present. 9 The Plaintiff shall complete, date, execute, and produce the 10 standard medical and other records release authorization 11 forms, some of which are attached as Exhibit A .
12 February 22, 2022	13 Plaintiff shall produce the completed Plaintiff Fact Sheet 14 ("PFS") and related information utilized in the <i>In re: C. R.</i> 15 <i>Bard, Inc. IVC Filter MDL</i> , attached as Exhibit B .
16 April 1, 2022	17 Defendants shall produce the Defendant Fact Sheet ("DFS") 18 and related information utilized in the <i>In re: C. R. Bard, Inc.</i> 19 <i>IVC Filter MDL</i> , attached as Exhibit C .
20 May 9, 2022	21 The Parties shall join other parties and amend the pleadings.
22 November 11, 23 2022	24 Case-specific fact discovery closes.
25 December 23, 26 2022	27 The Plaintiff shall produce case-specific expert reports.
28 February 3, 2023	29 The Defendants shall produce case-specific expert reports.
30 March 16, 2023	31 The Plaintiff shall produce any case-specific rebuttal expert 32 reports.
33 April 25, 2023	34 The Defendants shall produce any rebuttal expert reports.
35 June 6, 2023	36 Deadline to depose the Plaintiff's case-specific experts about 37 their case-specific reports.
38 July 18, 2023	39 Deadline to depose the Defendants' case-specific experts 40 about their case-specific reports.
41 September 19, 42 2023	43 Deadline to file Daubert motions and other dispositive 44 motions.

45
46 c. **Any issues about disclosure, discovery, or preservation of electronically
47 stored information, including the form or forms in which it should be
48 produced.**

49 All fact and expert discovery concerning general liability issues was completed in the
50 MDL. More than 1.5 million Bard documents and transcripts of more than 150 corporate

1 witness depositions were produced. Document productions in the MDL contained significant
 2 confidential, privileged, and patient information. To expedite production, the documents were
 3 produced after, in large part, a “no-eyes-on” review. The documents therefore were produced
 4 pursuant to the terms of multiple protective orders entered by the MDL court preventing their
 5 disclosure. The documents produced in the MDL are available to the Parties, and Defendants
 6 propose utilizing the MDL discovery on generic liability issues in this action.

7 **d. Any issues about claims of privilege or of protection as trial-preparation
 8 materials, including—if the parties agree on a procedure to assert these
 9 claims after production—whether to ask the court to include their
 10 agreement in an order under Federal Rule of Evidence 502.**

11 Claims of privilege and an order under Federal Rule of Evidence 502 are accounted
 12 for in the Proposed Protective Order.

13 **e. What changes should be made in the limitations on discovery imposed
 14 under these rules or by local rule, and what other limitations should be
 15 imposed.**

16 Defendants propose use of the Plaintiff Fact Sheet (“PFS”) and Defendant Fact Sheet
 17 (“DFS”) forms utilized in the MDL 2641 in lieu of traditional discovery mechanisms. *See,*
 18 Attachments B and C. Defendants propose the terms incorporated into the PFS and DFS
 19 forms and Federal Rules of Civil Procedure 26, 33, 34, and 37 shall apply to the completion
 20 and supplementation of the Fact Sheets. Defendants propose that any additional case-specific
 21 written discovery such as Interrogatories or Request for Production will be limited and
 22 targeted to the specific facts of this case. Defendants anticipate that using Fact Sheets will
 23 expedite the fact-discovery process.

24 **f. Any other orders that the court should issue under Rule 26(c) or under
 25 Rule 16(b) and (c).**

26 The MDL Court entered numerous orders and adhering to these orders here is
 27 appropriate and would promote efficiency and judicial economy. In the Remand Order, the
 28 MDL Court recognized that “[t]he Court has made many rulings in this MDL that could affect

1 the remanded and transferred cases.” [ECF 8 at 16]. As such, to assist the courts that receive
 2 the transferred cases, the MDL Court provided a “summary of the key legal and evidentiary
 3 rulings.” *Id.* at 16. *See id.* at 16–30. The Remand Order also provides a list of all Case
 4 Management Orders, discovery orders, and other significant rulings relevant to cases on
 5 remand, which list includes general descriptions of the subject matter of such orders. [ECF 8
 6 at 77–87]. Defendants refer the Court to this section of the Remand Order. Defendants
 7 propose that the Parties generally abide by the Case Management Orders in the MDL,
 8 including but not limited to those Case Management Orders that have been incorporated into
 9 the Proposed Protective Order.

10 **5. ALTERNATIVE DISPUTE RESOLUTION.**

11 Despite Defendants’ efforts to confer, the Parties have not conferred about using
 12 alternative dispute resolution.

13 **6. ALTERNATIVE FORMS OF CASE DISPOSITION.**

14 Despite Defendants’ efforts to confer, the Parties certify they have conferred about trial
 15 by a magistrate judge under 28 U.S.C § 636(c) and Fed. R. Civ. P. 73 and the use of the Short
 16 Trial Program.

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1 **7. ELECTRONIC EVIDENCE.**

2 Despite Defendants' efforts to confer, the Parties have not discussed whether they
3 intend to present evidence in electronic format to jurors for the purposes of jury deliberations.
4 No stipulations have been reached by the Parties in this regard to-date.

5
6 Dated: January 14, 2022

GREENBERG TRAURIG, LLP

7 By: /s/ Eric W. Swanis

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25 **ORDER**

26 IT IS ORDERED that ECF No. 21 is DENIED without
27 prejudice. The parties may seek up to a year between
28 now and when dispositive motions are due, though they
29 may seek extensions as necessary.

30 IT IS SO ORDERED
31 DATED: 1:54 pm, January 21, 2022

32 
33 BRENDA WEKSLER
34 UNITED STATES MAGISTRATE JUDGE

CERTIFICATE OF SERVICE

2 I hereby certify that on **January 14, 2022**, I caused the foregoing document to be
3 electronically filed with the Clerk of the Court using the CM/ECF system, which will send
4 notification of such filing to the CM/ECF participants registered to receive such service, and
5 I hereby certify that I caused to have mailed by United States Postal Service the foregoing
6 document to the following non-ECF participants:

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